

**SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

JOE COMES and RILEY PAINT, INC., an
Iowa corporation,

Plaintiffs,

V.

MICROSOFT CORPORATION, a
Washington Corporation,

Defendant.

No. CV 05-562

**PLAINTIFFS' NOTICE OF
MODIFICATION OF
PROPOSED FOURTH
AMENDED PETITION PRIOR
TO ACTION ON PLAINTIFFS'
MOTION TO AMEND THIRD
AMENDED PETITION**

PLEASE TAKE NOTICE that Plaintiffs Joe Comes and Riley Paint (“Plaintiffs”), on behalf of themselves and the two certified classes they represent, hereby modify Plaintiffs’ proposed Fourth Amended Petition as set forth in the attached Exhibit A.¹

On September 16, 2005, Plaintiffs filed a Motion to Amend Plaintiffs' Third Amended Petition ("Motion to Amend") in the Iowa District Court for Polk County.² Plaintiffs' proposed Fourth Amended Petition was attached as an exhibit to the Motion to Amend. The Motion to Amend is pending and no ruling has been made as to whether Plaintiffs' proposed Fourth Amended Petition will be accepted in whole or in part. Since no action has been taken on the Motion to Amend and Microsoft has requested additional time to respond to the Motion, Plaintiffs hereby notify the Court and Microsoft of modifications made to Plaintiffs' proposed Fourth Amended Petition as follows:

¹ Exhibit A is red-lined to assist in showing the changes.

² This action was filed in the Iowa District Court for Polk County on February 22, 2000. *Comes v. Microsoft Corp.*, No. CL82311. Microsoft removed this action to this Court on October 13, 2005. Plaintiffs are filing a Motion to Remand this action to the Iowa District Court for Polk County for lack of subject matter jurisdiction.

¶ 212. Strike “by, *inter alia*, misappropriating Burst’s intellectual property”;

¶ 252. Strike entire paragraph;

¶ 253. Strike entire paragraph;

¶ 255. Insert “While Plaintiffs understand that” at the beginning of the paragraph.

Insert “intentional destruction of and” after “Microsoft” and before “failure to preserve.” Insert “is not a cause of action under Iowa law, such conduct” after “other evidence” and before “has harmed.” Add “for Microsoft’s violations of the Iowa Competition Law” after “to prove their claims.” Strike “in this case”;

These modifications correct grammar and further clarify the causes of actions asserted by Plaintiffs in this matter, all of which arise solely under the Iowa Competition Law, Iowa Code § 553.1 *et seq.*

Dated: October 18, 2005.

/s/ Roxanne Barton Conlin

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I hereby certify that on October 18,2005, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of said filing to all CM/ECF participants.

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